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2 UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

3 Civ. No. 01:07-00039-SM

4 - - - - -x  
5 UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION,

6 Plaintiff,

7 -against-

8 PIYUSH G. PATEL, DAVID J. KIRKPATRICK,  
9 ERIC JAEGER, LAWRENCE COLLINS, MICHAEL  
A. SKUBISZ, JERRY A. SHANAHAN,

10 Defendants.

11 - - - - -x

12 399 Park Avenue  
New York, New York

13  
14 June 30, 2011

15 9:36 a.m.

16 DEPOSITION of STEVEN L.  
17 HENNING, an expert witness in the  
18 above-entitled action, held at the  
19 above time and place, taken before  
20 Barbara P. Goldsmith, a Shorthand  
21 Reporter and Notary Public of the State  
22 of New York, pursuant to the Federal  
23 Rules of Civil Procedure, and  
24 stipulations between Counsel.  
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1  
2 APPEARANCES:  
3

4 UNITED STATES SECURITIES AND  
5 EXCHANGE COMMISSION  
6 For Plaintiff

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10 Denver, Colorado 80202

11 BY: NANCY GEGENHEIMER, ESQ.  
12

13 WILMER, CUTLER, PICKERING,  
14 HALE & DORR, LLP  
15 Attorneys for Defendant ERIC JAEGER  
16 60 State Street  
17 Boston, Massachusetts 02109  
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19 BY: JAMES W. PRENDERGAST, ESQ.  
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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED,  
by and among counsel for the respective  
parties hereto, that the filing,  
sealing and certification of the within  
deposition shall be and the same are  
hereby waived;

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to form  
of the question, shall be reserved to  
the time of the trial;

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be  
signed before any Notary Public with  
the same force and effect as if signed  
and sworn to before the Court.

1 STEVEN L. HENNING

2 not revenue recognition transactions.

3 They are transactions that do or do not  
4 throw off revenue that might or might not  
5 be recognized. Would you agree with that?

6 A. Yes, I do.

7 Q. There is nothing inherent about  
8 the structure of these transactions that  
9 prevents an appropriate decision being  
10 made regarding whether or not revenue can  
11 be recognized from them, there's no magic  
12 element to them that disguises the  
13 transaction?

14 A. I agree, yes.

15 MR. PRENDERGAST: You guys have  
16 been very patient. I am not going to  
17 put you through any more.

18 MS. GEGENHEIMER: Let me ask you  
19 a couple of questions.

20 EXAMINATION BY

21 MS. GEGENHEIMER:

22 Q. Mr. Henning, could you just  
23 check, was the Centricity transaction  
24 recognized as revenue in the first quarter  
25 of transition year 2001?

1 STEVEN L. HENNING

2 A. I believe that Centricity  
3 \$93,000 of that was first quarter  
4 transition year 01 and \$7,000 was in the  
5 second quarter of the transition year 01.

6 Q. And the first quarter of  
7 transition year 01 ended June 1, 2001,  
8 correct?

9 A. Either June 1st or June 2nd.

10 Q. Would you turn to tab 51,  
11 please.

12 A. Okay.

13 Q. You'll recall Mr. Prendergast  
14 asked you was there any reason why  
15 Mr. Jaeger should have rejected the credit  
16 authorization on Centricity?

17 MR. PRENDERGAST: Objection.

18 Q. On May 29, 2001, it appears he  
19 learned from Glen Nye --

20 A. Right.

21 Q. -- at Centricity, amongst other  
22 things, "We were up against the wall with  
23 cash/financing."

24 Do you see that?

25 A. Yes.

1 STEVEN L. HENNING

2 Q. Is that something that should  
3 have been taken into consideration before  
4 recording revenue at the end of the next  
5 day?

6 A. Yes, that would be part of the  
7 consideration, yes.

8 Q. Take a look at tab 20, if you  
9 would, please. And if you could take a  
10 moment and read the e-mail exchanges. As  
11 you know, e-mails generally go backwards.

12 A. Yes.

13 MR. PRENDERGAST: Which one are  
14 you looking at?

15 MS. GEGENHEIMER: Tab 20.

16 MR. PRENDERGAST: And the  
17 question is?

18 MS. GEGENHEIMER: I haven't  
19 asked it yet. He hadn't finished  
20 reading yet.

21 MR. PRENDERGAST: I'm sorry.

22 A. Okay.

23 Q. Have you had a chance to read  
24 that?

25 A. Yes.

1 STEVEN L. HENNING

2 Q. It begins with Mr. Jaeger's  
3 copy, but they're talking about the terms  
4 of the investment in the first e-mail,  
5 correct?

6 A. Correct.

7 Q. You'll recall that  
8 Mr. Prendergast asked you about iPolicy  
9 and there's an investment side and a  
10 purchase side?

11 A. Yes.

12 Q. And it concludes by saying, "It  
13 may make the most sense for them all."  
14 That's a gentlemen from iPolicy, so Bimal,  
15 "or Eric or Piyush to call direct to talk  
16 to representative."

17 Do you see that?

18 A. Yes.

19 Q. Then you go up chronologically  
20 in the e-mails, it's noted that Bimal is  
21 out --

22 A. Yes.

23 Q. -- all morning?

24 A. Correct.

25 Q. And then the next e-mail says,

1 STEVEN L. HENNING

2 "Due to time difference, you'll probably  
3 see an e-mail at the end of the day. How  
4 about a new conference?"

5 Do you see that?

6 A. Yes.

7 Q. To which Enterasys responds,  
8 "12:00 noon will be too late to get wires  
9 out and back, I fear. We need to have the  
10 Aprisma PO paid off tomorrow."

11 Now, the PO relates to the  
12 purchase, correct?

13 A. Correct.

14 Q. What, if anything, does this  
15 tell you about whether the investment  
16 money is being used to pay off the  
17 purchase, the purchase order?

18 A. That it is stated a  
19 round-tripping of the cash.

20 Q. Take a look, if you will, at tab  
21 38, please. This is a series of e-mails  
22 and then the side letters with respect to  
23 Everest Broadband, if you'll recall.

24 A. Yes.

25 Q. And again reading backwards, the